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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KENT H. ROBERTS,

Defendant.

CASE NO.: C-07-4580 MHP

DECLARATION OF RODNEY G.
STRICKLAND IN SUPPORT OF
DEFENDANT KENT ROBERTS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL EXHIBITS F, J, K, T,
AND U TO THE DECLARATION OF
WILLIAM S. FREEMAN

[Local Rule 79-5(d)]

Judge: Hon. Marilyn H. Patel

1 I, Rodney G. Strickland, Jr., hereby declare:

2 1. I am member of the State Bar of California and authorized to practice law before
3 this Court. I am a member of Wilson Sonsini Goodrich & Rosati, P.C. ("WSGR"), counsel for
4 non-parties McAfee, Inc. ("McAfee" or the "Company") and, among other individuals who have
5 been subpoenaed in connection with this action, McAfee director Robert Pangia.

6 2. I make this Declaration of my own personal knowledge and pursuant to Local
7 Rule 79-5(d). If called as a witness in this action, I could and would testify competently as to the
8 matters set forth herein.

9 3. On February 21, 2008, McAfee's counsel received notice from defendant Kent
10 Roberts, through his counsel Cooley Godward Knonish LLP, that Mr. Roberts had filed under
11 seal certain exhibits to the Declaration of William S. Freeman (the "Freeman Declaration"). On
12 February 22, 2008, this Court granted defendant's Administrative Motion relating to those
13 exhibits, and directed the Clerk of the Court to allow defendant to file certain exhibits under seal.
14 See Docket No. 43. This Declaration concerns Exhibits F, J, K, T and U to the Freeman
15 Declaration.

16 4. The Protective Order in this action allows "highly sensitive business information"
17 to be designated as "Confidential" and filed under seal pursuant to Local Rule 79-5. See Docket
18 No. 16 at Sections 2.3 and 10. As explained below, Exhibits F, J, K, T and U contain the
19 confidential, highly sensitive business information of a non-party -- McAfee -- and therefore
20 should remain under seal pursuant to Local Rule 79-5.

21 5. Exhibits F and K are drafts of minutes of meetings of the McAfee Board of
22 Directors that occurred in October 2006. The draft minutes reflect confidential information of
23 non-party McAfee. McAfee produced these draft minutes to the United States Attorneys' Office
24 (the "USAO") in response to a grand jury subpoena to McAfee. As they reflect on their face,
25 when McAfee produced these draft minutes to the USAO it requested that they be treated as
26 nonpublic and confidential information pursuant to the Freedom of Information Act, 5 U.S.C. §
27 552. E.g., Exh. F at 1; Exh. K at 1 ("FOIA CONFIDENTIAL TREATMENT REQUESTED").
28 These unsigned, draft minutes reflect non-public, confidential information concerning the

1 investigation of McAfee's historic stock option granting practices and certain actions taken with
2 respect to former executives of the Company and certain prior stock option grants. *See, e.g.*,
3 Exhibit F at 2-3 and Exhibit K at 2. Unsigned, draft internal documents of a publicly-traded
4 company relating to such topics should not enter the public domain – especially where, as here,
5 the Company is not a party to the underlying action.

6 6. Exhibit J consists of minutes of a meeting of the McAfee Board of Directors that
7 occurred in June 2006. Exhibit J reflects confidential information of non-party McAfee.
8 McAfee produced this document to the USAO in response to the grand jury subpoena. As with
9 Exhibits F and K, when McAfee produced this document to the USAO it requested that it be
10 treated as nonpublic and confidential information pursuant to the Freedom of Information Act, 5
11 U.S.C. § 552. *See* Exhibit J at 1 (“FOIA CONFIDENTIAL TREATMENT REQUESTED”).
12 Exhibit J reflects non-public, confidential and sensitive information concerning the investigation
13 of McAfee's historic stock option granting practices, including counsel's report to the Board
14 regarding certain communications with the Securities and Exchange Commission (“SEC”) and
15 the United States Department of Justice (the “DOJ”) and counsel's characterization of certain
16 matters. *See id.* at 1-2. The minutes also include reference to confidential internal discussions
17 regarding McAfee's financial reporting. *See id.* at 2.

18 7. Exhibit T is a “DRAFT” memorandum that was prepared in connection with the
19 investigation of McAfee's historical stock option granting practices. It reflects confidential
20 information of non-party McAfee. The exhibit – which is labeled “Confidential” – relates to
21 “evidence” and internal documentation regarding the proposed revised accounting treatment of a
22 large option grant. McAfee produced this document to the SEC in response to a subpoena, and
23 requested that it be treated as nonpublic and confidential pursuant to the Freedom of Information
24 Act, 5 U.S.C. § 552. *See* Exhibit T at 1 (“FOIA CONFIDENTIAL TREATMENT
25 REQUESTED”). Exhibit T contains non-public, confidential information concerning the
26 findings of the investigation regarding one large option grant – including, in particular,
27 “Conclusions” regarding the “evidence” relating to the accounting for that grant. *See id.* at 3.
28 Exhibit T includes quotations from and summaries of other non-public, confidential McAfee

documents, and reflects “understandings” and findings “Based on” the “review” of those other confidential documents. *See id.* at 2. It also reflects opinions and proposed conclusions regarding the proposed accounting treatment for the option grant at issue in the exhibit. *See id.* at 2-3.

8. Exhibit U is a 12-page PowerPoint presentation to the Audit Committee of McAfee’s Board of Directors from less than one year ago. It reflects confidential information of non-party McAfee. Exhibit U was produced to Mr. Roberts by non-party Robert Pangia, a member of McAfee’s Board of Directors, in response to a document subpoena served by Mr. Roberts. It is clearly labeled “Confidential”. Exhibit U at 1. This document contains non-public, confidential information concerning the internal investigation and McAfee’s progress towards restating its financial results. For example, it includes a detailed “Status Overview” regarding particular projects undertaken by management and the investigatory team. *Id.* at 4-5, 8. It includes confidential internal financial information including “estimates” regarding the accounting impact of certain option grants. *Id.* at 7. It includes a detailed timeline reflecting, among other things, specific projects to be completed by counsel. *Id.* at 8-12. Finally, the Appendix includes a very detailed “Open Items List” reflecting counsel’s “Deliverables.” *Id.* at 11-12.

9. The foregoing reflects that (a) Exhibits F, J, K, T and U to the Freeman Declaration consist of and reflect non-public, confidential information of a non-party and (b) that non-parties McAfee and Mr. Pangia have taken the necessary steps to maintain the confidentiality of these documents. Thus, these documents should remain under seal pursuant to Local Rule 79-5. The confidential internal documents of non-party McAfee, which McAfee was compelled to produce in response to subpoenas, should not enter the public domain as the result of a discovery dispute between Mr. Roberts and another non-party.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 27, 2008 in Palo Alto, California.

/s/ Rodney G. Strickland, Jr.
Rodney G. Strickland, Jr.